



January 30, 2004

HOUSE BILL No. 1031

DIGEST OF HB 1031 (Updated January 28, 2004 2:30 pm - DI 92)

Citations Affected: IC 14-26.

Synopsis: Lake access by an easement. Prohibits, except when granted written permission, constructing or maintaining a pier, a dock, or another structure that blocks or restricts an easement holder's access to or use of a public lake. Allows an easement holder to use certain structures that extend from the easement to the shoreline or into a lake. Authorizes the natural resources commission to mediate disputes between easement holders. Authorizes judicial review of commission actions. Authorizes easement holders to form an association or a conservancy district to manage the easement. (The introduced version of this bill was prepared by the natural resources study committee.)

Effective: Upon passage.

Pond, Bischoff

December 4, 2003, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.
January 29, 2004, amended, reported — Do Pass.

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HB 1031—LS 6164/DI 77+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1031

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-26-2-23, AS ADDED BY P.L.64-2000,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 23. The commission shall adopt rules in the
4 manner provided in IC 14-10-2-4 to do the following:

5 (1) Assist in the administration of this chapter.

6 (2) Provide objective standards for licensing:

7 (A) the placement of a temporary or permanent structure or
8 material; or

9 (B) the extraction of material;

10 over, along, or within a shoreline or waterline. The standards shall
11 exempt any class of activities from licensing if the commission
12 finds that the class is unlikely to pose more than a minimal
13 potential for harm to the public rights described in section 5 of
14 this chapter.

15 (3) Establish a process under IC 4-21.5 for the mediation of
16 disputes among riparian owners **or easement holders** or between
17 a riparian owner **or an easement holder** and the department

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concerning the usage of an area over, along, or within a shoreline or waterline for a matter within the jurisdiction of this chapter. The rule must provide ~~that:~~ **the following:**

(A) If good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute. ~~and~~ **In making the determination the department shall consider and accommodate this chapter and the rules adopted under this chapter, including the public trust, with the correlative riparian rights and easement rights of affected persons. The determination may include an equitable allocation of uses where reasonably required by available space or resources.**

(B) A person affected by the determination of the department may seek administrative review by the commission.

(C) **A party to an action by the commission may seek judicial review in a county where the freshwater lake is located.**

SECTION 2. IC 14-26-2-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 24. (a) This section governs the interests between or among easement holders. This section does not apply to an easement owned or controlled by a political subdivision (as defined by IC 36-1-2-13).**

(b) Except as provided in subsection (c), a person may not construct or maintain a pier, a dock, or another structure that blocks or restricts an easement holder's access to or use of, by use of the easement, a public freshwater lake.

(c) Notwithstanding subsection (b), a person may construct or maintain a pier, a dock, a lift station, a platform, or another structure that blocks or restricts an easement holder's access to or use of, by use of the easement, a public freshwater lake if one (1) of the following conditions exists:

(1) If the easement is owned and controlled by an association, written permission is granted in accordance with the rules and bylaws of the association.

(2) If an easement is controlled by a conservancy district, written permission is granted by the board of directors.

(d) Each easement holder has the right to use a pier, a dock, a lift station, a platform, or another structure that extends from the easement holder's easement to the shoreline or water line or into a public freshwater lake.

(e) Where a plat, a subdivision, an addition, or other identifiable

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1 parcel of land is served by an easement that provides access to a
2 public freshwater lake and the easement does not provide
3 effectively for the easement's management, a majority of the
4 freeholders (as defined by IC 14-8-2-104) who are benefitted by the
5 easement may form:

6 (1) an association established under IC 23-5 through IC 23-10;

7 or

8 (2) a conservancy district established under IC 14-33.

9 A conservancy district established under this subsection provides
10 beneficial water management under IC 14-33-1-1(a)(6).

11 SECTION 3. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1031, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-26-2-23, AS ADDED BY P.L.64-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. The commission shall adopt rules in the manner provided in IC 14-10-2-4 to do the following:

- (1) Assist in the administration of this chapter.
- (2) Provide objective standards for licensing:
 - (A) the placement of a temporary or permanent structure or material; or
 - (B) the extraction of material;

over, along, or within a shoreline or waterline. The standards shall exempt any class of activities from licensing if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in section 5 of this chapter.

- (3) Establish a process under IC 4-21.5 for the mediation of disputes among riparian owners **or easement holders** or between a riparian owner **or an easement holder** and the department concerning the usage of an area over, along, or within a shoreline or waterline for a matter within the jurisdiction of this chapter.

The rule must provide ~~that~~ **the following**:

- (A) If good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute. **and In making the determination the department shall consider and accommodate this chapter and the rules adopted under this chapter, including the public trust, with the correlative riparian rights and easement rights of affected persons. The determination may include an equitable allocation of uses where reasonably required by available space or resources.**
- (B) A person affected by the determination of the department may seek administrative review by the commission.
- (C) **A party to an action by the commission may seek judicial review in a county where the freshwater lake is located."**

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Page 1, line 3, after "(a)" insert **"This section governs the interests between or among easement holders."**

Page 1, line 9, delete "fresh water" and insert **"freshwater"**.

Page 1, line 11, after "dock," insert **"a lift station, a platform,"**.

Page 1, line 13, delete "fresh water" and insert **"freshwater"**.

Page 2, line 1, delete "owned by one (1) or more persons, but not an" and insert **"controlled by a conservancy district, written permission is granted by the board of directors."**

Page 2, delete lines 2 through 3.

Page 2, line 4, after "dock," insert **"a lift station, a platform,"**.

Page 2, line 6, delete "fresh water" and insert **"freshwater"**.

Page 2, between lines 7 and 8 , begin a new paragraph and insert:

"(e) Where a plat, a subdivision, an addition, or other identifiable parcel of land is served by an easement that provides access to a public freshwater lake and the easement does not provide effectively for the easement's management, a majority of the freeholders (as defined by IC 14-8-2-104) who are benefitted by the easement may form:

(1) an association established under IC 23-5 through IC 23-10;

or

(2) a conservancy district established under IC 14-33.

A conservancy district established under this subsection provides beneficial water management under IC 14-33-1-1(a)(6)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1031 as introduced.)

BISCHOFF, Chair

Committee Vote: yeas 11, nays 0.

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